

**STAFF REPORT**  
**PLANNING COMMISSION**

**FILE NO.: CP12-001**

**Submitted: 01/09/2012**

**PROJECT DESCRIPTION:**

Conditional Use Permit for late night use until 3:00 a.m. for a bakery and cafe (with a previously permitted, but expired Conditional Use Permit) to operate the same late night hours) on a 0.22-gross-acre site.

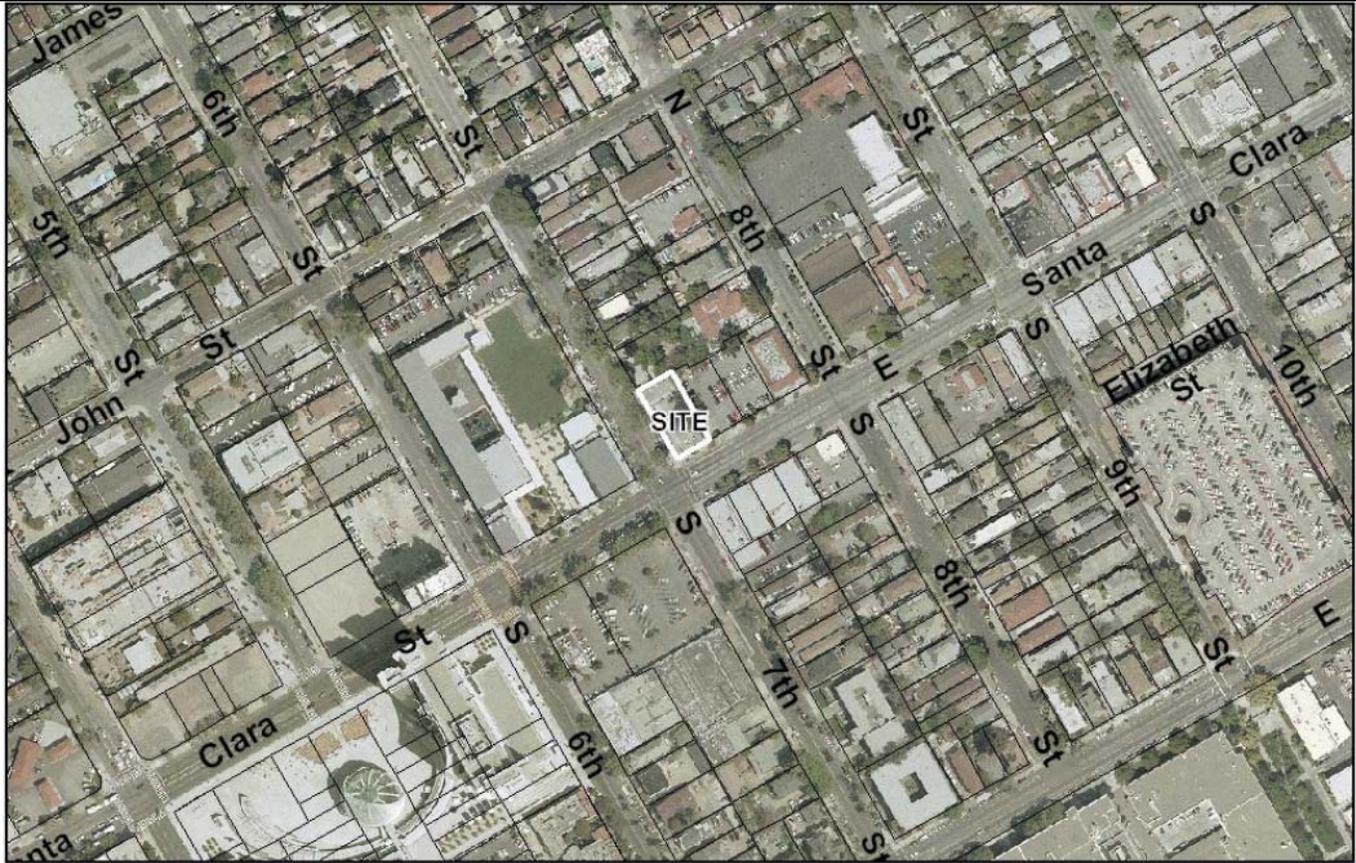
**LOCATION:**

The northeast corner of East Santa Clara Street and 7th Street (301 East Santa Clara Street) (T & C Corporation, Owner).

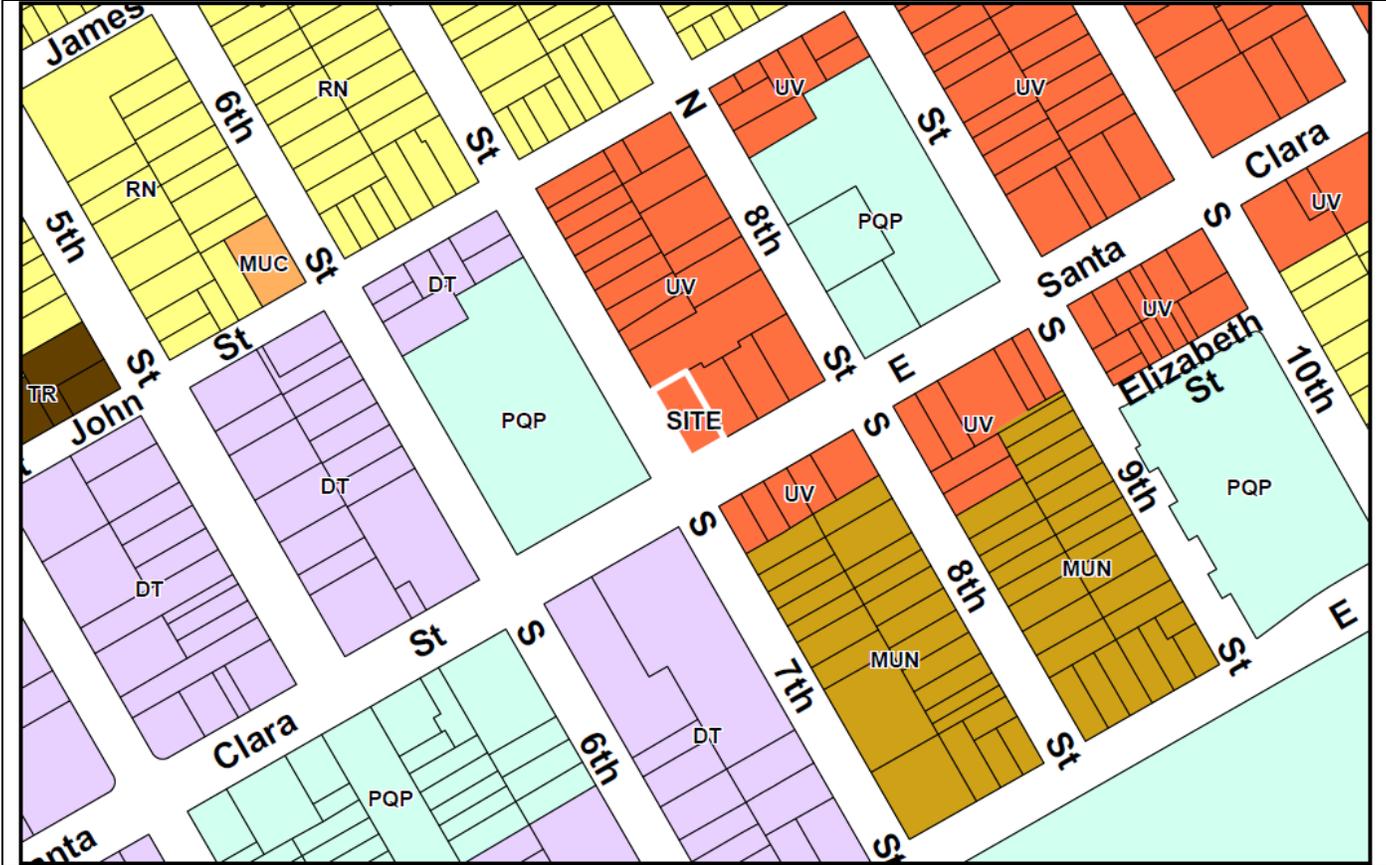
Zoning	CG-Commercial General Zoning District
2040 General Plan	Urban Village (East Santa Clara Street west of 17 <sup>th</sup> )
Council District	3
Annexation Date	March 27, 1850 (Original City)
SNI	13 <sup>th</sup> Street
Historic Resource	Yes
Redevelopment Area	Yes
Specific Plan	No

**Aerial Map**

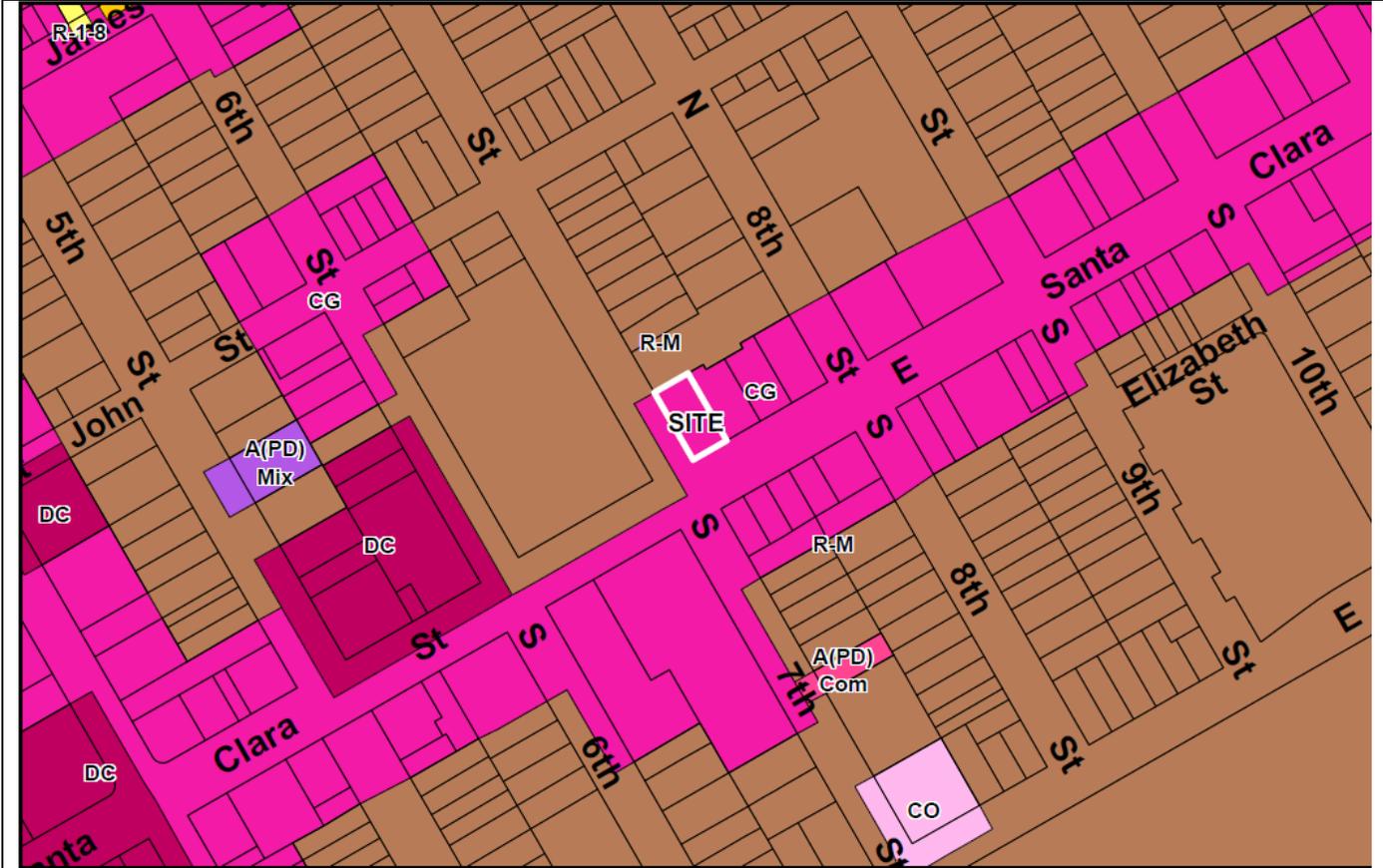
**N**



### GENERAL PLAN



### ZONING



## **RECOMMENDATION**

Planning staff recommends the Planning Commission approve the proposed Conditional Use Permit on the subject site for the following reasons:

1. The subject Conditional Use Permit is consistent with the Envision San José 2040 General Plan and its goals and policies, specifically:
  - a. The use is consistent with the site's Land Use/Transportation Diagram designation of Urban Village in that neighborhood-serving commercial uses, such as bakeries and restaurants, are intended uses under this designation.
  - b. The project supports the Urban Villages and Destination Downtown Major Strategies that are intended to provide compact, walkable neighborhoods with mixed uses and to support the function of Downtown as the City's cultural center for arts, entertainment, culinary and sporting activities, and support Cultural Attraction Policies for private efforts to achieve a stronger mix of evening and late-night uses in Downtown.
2. The project conforms to City Council Policy, 6-27 for the Evaluation of 24-Hour Uses.

## **BACKGROUND & DESCRIPTION**

On January 9, 2012, the applicant, T&C Corporation, requested a Conditional Use Permit to operate an existing bakery and restaurant during late-night (after-midnight) hours between midnight and 3:00 a.m. Since November 30, 1984, the Zoning Ordinance has required that all commercial uses in Commercial Zoning Districts operating between the hours of 12:00 midnight and 6:00 a.m. be subject to a Conditional Use Permit.

### **Permit History**

On January 28, 2004, the Planning Commission approved a Conditional Use Permit (File No. CP03-061) to allow (1) the operation of the City Bakery and Café restaurant between the hours of 12:00 midnight and 3:00 a.m., and (2) various exterior modifications to the existing commercial building. On December 6, 2006, the Planning Commission approved an application for a Conditional Use Permit Amendment to renew the Conditional Use with a condition for a five-year time limit. The subject Conditional Use Permit Amendment expired on December 6, 2011. Therefore, because of untimely renewal, the subject application is considered a new one.

The existing building was originally constructed in approximately 1910; however, significant modifications have been made to the structure since that time. The 2004 approval (CP03-061) included changes to the exterior of the structure that, in conformance with the Secretary of the Interior's Standards for Rehabilitation of Historic Structures, reverted the corner element of the structure to the main entryway. All exterior changes that were approved have been completed. Currently, the structure is listed as a Structure of Merit on the City of San José Historic Resources Inventory. The applicant proposes no exterior changes to the structure with the current Conditional Use Permit request.

### **Site and Surrounding Uses**

The subject restaurant occupies the corner tenant space in an existing building at the intersection of East Santa Clara and North 7<sup>th</sup> Streets. It occupies approximately one-third of the existing structure comprising

approximately 44 linear feet along North 7<sup>th</sup> Street. Surrounding land uses include neighborhood-serving commercial uses to the south across Santa Clara Street and to the east. A public school exists to the west across North 7<sup>th</sup> Street. A martial arts academy and day care center exist behind the subject building to the north.

## **ANALYSIS**

The proposed Conditional Use Permit is analyzed with respect to: 1) conformance with the Envision San José 2040 General Plan; 2) conformance with City Council Policy 6-27 for the Evaluation of 24-Hour Uses; and 3) conformance with the California Environmental Quality Act (CEQA).

### **Envision San José 2040 General Plan Conformance**

The Envision San José 2040 General Plan Land Use/Transportation Diagram designates the site as part of the Urban Village Corridor along East Santa Clara Street west of 17<sup>th</sup> Street. The site is in an established neighborhood business district within the historic greater Downtown that is part of the original City established in 1850.

#### *Urban Villages and Destination Downtown Major Strategies*

The proposal is consistent with the Urban Village (Density: Up to 250 DU/AC; FAR Up to 10.0) land use designation on the subject site in that the proposal is neighborhood/community-serving in character, and is located within an established, urban, historic building. Downtown Urban Village Corridors also reinforce the importance of San José's Downtown as the physical and symbolic center of the City, and as a primary jobs center.

The proposal is also consistent with the General Plan Major Strategy #5 - Urban Villages, which is intended to promote the development of Urban Villages to provide active, walkable, bicycle-friendly, transit-oriented, mixed-use urban settings for new housing and job growth attractive to an innovative workforce and consistent with the Plan's environmental goals. The subject Urban Village is planned along an existing commercial corridor extending to North 17<sup>th</sup> Street. Such Urban Villages will include uses and urban spaces similar to those promoted within other Urban Villages, but in a more linear form. These corridors also create a positive identity for San José by creating a consistent urban design character along the major roadways that connect San José's neighborhoods, regional hubs, neighboring cities and the Downtown.

In addition, the project supports the Destination Downtown Major Strategy for Downtown as the City's cultural center for arts, entertainment, culinary and sporting activities, and supports the General Plan's Cultural Attraction Policies for private efforts to achieve a stronger mix of evening and late-night uses in Downtown.

### **City Council Policy 6-27: Evaluation of 24-Hour Uses**

The City Council Policy, Evaluation of 24-Hour Uses, is intended to assure compatibility of uses operating between 12:00 midnight and 6:00 a.m. with surrounding land uses.

#### *Area Use Compatibility*

The Policy states that "twenty-four-hour uses should not be approved unless the facility can operate without detriment to nearby residential uses or the general welfare of the surrounding area." As discussed

below in the “Use Separation” and “Police Issues” section in more detail, the proposed use should not be detrimental to the nearby residential or other surrounding areas.

### *Use Separation*

The Policy states that generally, 24-hour uses should not be located within 300 feet of residential properties. It continues, however, to state that the separation may be increased or decreased on a case-by-case review of the specific circumstances of the site and proposed use based on intensity of use, location of other buildings and physical features, neighborhood input, or other relevant criteria. The closest residential property to the subject property is two parcels to the north, approximately 175 feet from the subject tenant space. The closest residential parcels to the south are approximately 240 feet away, separated from the subject site by East Santa Clara Street and by approximately 125 linear feet of a commercial building located at the southeast corner of North 7<sup>th</sup> Street and East Santa Clara Street.

The proposed sit-down restaurant, unlike nightclubs and drive-through restaurant uses, tends to be less problematic when in close proximity to residential uses, as discussed in the Policy. Furthermore, intervening streets and existing commercial structures separate the subject tenant space from the residential areas, thereby compensating for a full 300-foot separation. Given the characteristics and location of the proposed late-night use of the restaurant/bakery, it is unlikely that any noise from the proposed use will be audible or distinguishable at the closest residential property line. The applicant does have an existing Type 41 permit for on-sale beer and wine from the Department of Alcoholic Beverage Control to allow the on-sale consumption of alcoholic beverages only as an incidental use to the public eating establishment.

### *Outdoor Activities*

No outdoor activities associated with the restaurant, other than truck deliveries, maintenance, and garbage collection, are currently proposed or permitted in conformance with the policy.

### *Police Issues*

The policy states that, “crime statistics and police safety issues which are directly related to uses operating between 12:00 midnight and 6:00 a.m. will be analyzed and considered in determining the appropriateness of 24-hour uses”. In a memo dated January 30, 2012, the San Jose Police Department stated it is neutral to the proposed Conditional Use Permit for The City Bakery and Café with the inclusion of specific conditions (see attached Police Memo). The Police Memo states that the reported crime statistics as defined by B&P Section 23958.4(c) are not over the 20% crime index. A crime analysis over the two years at the location revealed no significant policing problems.

### *Restroom Facilities*

Interior restroom facilities within the restaurant remain open and available during the late night business hours in conformance with the policy.

### *Noise*

The Zoning Ordinance requires that the noise level abutting the residential property line not exceed 55 decibels. Given the proposed use as a public eating establishment, and the separation between it and the nearest residential uses as discussed above, it is unlikely that noise from the proposed use will be audible or distinguishable from the nearby residential uses.

### *Cleaning and Maintenance*

No cleaning and maintenance of outdoor areas which utilizes mechanical blowers, vacuums, or other noise generating equipment is permitted between the hours of 10:00 p.m. and 7:00 a.m. in conformance with the policy.

### *Mitigation Management Plan*

Conditions of approval have been incorporated into the draft Resolution to mitigate potential impacts of the proposed 24-hour use. Litter control, Police issues, lighting, and exterior maintenance are addressed.

### *Specific Development Types – Sit Down Restaurants*

The subject restaurant is a “sit down” type restaurant, which the policy states does not generally exhibit the problems normally associated with “take-out” restaurants because patrons do not remain in their vehicles in the parking lot, and food is consumed within the building with appropriate supervision. Litter is not typically a problem, as food is not served in disposable wrappings or containers. Therefore, potential impacts from littering, loitering, and noise are substantially reduced by the characteristics of the proposed use.

### Parking

The property was developed prior to 1965 as a church use with no parking. In order for parking to now be required, the proposal must constitute a “substantial change” pursuant to SJMC Section 20.90.210(A). Generally, this means that there would have to be a 40 percent increase in the required number of spaces between the previous and proposed uses. Per Table 20-190 of the SJMC, a church use currently requires one parking space per 30 square feet of area designated for assembly, used together or separately for worship. Per the same table, a public eating establishment requires one parking space per 2.5 seats or one parking space per 40 square feet of dining area, whichever requires the greater number of parking spaces. An approximation of assembly area for the previous church use would be 1,500 gross square feet, thereby requiring 43 parking spaces. The current proposal, with approximately 975 gross square feet of dining area, would require only 21 parking spaces under the current Zoning Code. Because the restaurant use requires fewer parking spaces than the church use, there is not a “substantial change” in use per SJMC Section 20.90.210(A). Therefore, the applicant is not required to meet the parking standards of the current Zoning Code.

### Impacts from the Existing Use

The existing restaurant was permitted to operate after midnight until December 6, 2011. To date, staff is not aware of any negative impacts resulting from the previous operation of the existing subject use with the same extended operating hours as those currently proposed. Furthermore, the memorandum from the Police dated January 30, 2012, indicates that a crime analysis over the past two years for the subject site did not reveal any significant policing problems.

### **California Environmental Quality Act (CEQA)**

Under the provisions of Section 15301 (Existing Facilities) of the State Guidelines for Implementation of the California Environmental Quality Act, this project is found to be exempt from the environmental review

requirements of Title 21 of the San José Municipal Code, implementing the California Environmental Quality Act of 1970, as amended.

**Conclusion**

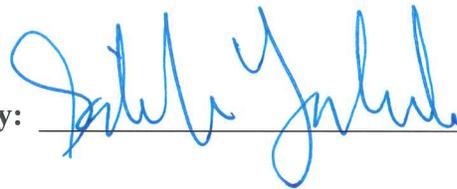
Based on the above analysis, the proposal conforms to the City’s specific guidelines for 24-hour/late-night operating hours. The existing late night use has operated successfully in the subject location without any significant issues and contributes to the intended 24-hour entertainment character of this area in the greater historic Downtown/Original City. Therefore, staff recommends that the Planning Commission approve the proposed Conditional Use Permit as recommended by staff.

**PUBLIC OUTREACH/INTEREST**

The property owners and occupants within a 500-foot radius of the subject site were sent public hearing notices for the Planning Commission hearing. This staff report has been posted on the City’s web site. Staff has been available to discuss the proposal with interested members of the public.

**Project Manager:** Jenny Nusbaum

**Approved by:**



**Date:** 04/03/12

<b>Owner/Applicant:</b> T & C Corporation Attn: Kien Luong 18550 Farragut Lane Los Gatos, CA 95030	<b>Attachments:</b> Draft Resolution Police Memo Reduced Plans
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## **RESOLUTION NO.**

Resolution of the Planning Commission of the City of San José granting, subject to conditions a Conditional Use Permit to use certain real property described herein for the purpose of allowing late-night use until 3:00 a.m. of an existing restaurant and bakery on a 0.22-gross-acre site

### **FILE NO. CP12-001**

BE IT RESOLVED BY THE PLANNING COMMISSION OF THE CITY OF SAN JOSÉ:

WHEREAS, pursuant to the provisions of Chapter 20.100 of Title 20 of the San José Municipal Code, on January 9, 2012, an application (File No. **CP12-001**) was filed for a Conditional Use Permit for the purpose of allowing operation after midnight until 3:00 am for an existing restaurant/bakery on a 0.22-gross-acre site, on that certain real property (hereinafter referred to as "subject property"), situate in the CG – Commercial General Zoning District, located at the northeast corner of East Santa Clara Street and North 7th Street (301 East Santa Clara Street), San José, and

WHEREAS, the subject property is all that real property described in Exhibit "A," which is attached hereto and made a part hereof by this reference as if fully set forth herein; and

WHEREAS, pursuant to and in accordance with Chapter 20.100 of Title 20 of the San José Municipal Code, this Planning Commission conducted a hearing on said application, notice of which was duly given; and

WHEREAS, at said hearing, this Planning Commission gave all persons full opportunity to be heard and to present evidence and testimony respecting said matter; and

WHEREAS, at said hearing this Planning Commission received and considered the reports and recommendation of the Director of Planning, Building and Code Enforcement; and

WHEREAS, at said hearing, this Planning Commission received in evidence a development plan for the subject property entitled, "Conditional Use Permit, Existing Site Plan, Floor Plan, 301 E. Santa Clara St., San Jose," dated March 8, 2012, received by the Planning Division on March 8, 2012. Said plan is on file in the Department of Planning, Building and Code Enforcement and is available for inspection by anyone interested, and said development plan is incorporated herein by this reference, the same as if it were fully set forth herein; and

WHEREAS, said hearing was conducted in all respects as required by the San José Municipal Code and the rules of this Planning Commission;

NOW, THEREFORE:

The Planning Commission finds that the following are the relevant facts regarding this proposed project:

1. This site has a designation of Urban Village on the adopted Envision San José 2040 General Plan Land Use/Transportation Diagram.
2. The project site is located in the CG-Commercial General Zoning District.
3. Under the provisions of Section 15301 of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA), this project is exempt from the environmental review requirements of Title 21 of the San José Municipal Code, implementing the California Environmental Quality Act of 1970, as amended. The project will not have a significant adverse effect on the environment.
4. The subject site is generally surrounded by neighborhood-serving commercial uses to the south across Santa Clara Street and to the east and the north, and a public school to the west across 7<sup>th</sup> Street.
5. The subject sit-down restaurant/bakery is in the corner tenant space of the existing building at the northeast corner of East Santa Clara Street and North 7<sup>th</sup> Street.
6. The subject sit-down restaurant/bakery previously operated from 6:00 a.m. to 3:00 a.m. under Conditional Use Permit file no. CP03-061, until the previous permit expired on December 8, 2011.
7. On January 9, 2012, the applicant filed the subject Conditional Use Permit to allow the continued use of the facility in accordance with the amended approval in 2006.
8. Because the subject application, File No. CP12-001, is not a timely application for renewal, as defined by the Zoning Ordinance, which is more than 90 days, and no greater than 180 days, prior to the date of expiration, the application is deemed a new Conditional Use Permit request rather than a renewal.
9. The applicant is not proposing any change in uses from those previously approved by Conditional Use Permit CP03-061 as amended by CPA03-061-01.
10. The site was developed prior to 1965 as a church use, and did not provide any parking at the time of its development. Because the restaurant/bakery use requires fewer parking spaces than the church use, there is not a “substantial change” in use per SJMC Section 20.90.210(A). Therefore, the applicant is not required to meet the parking standards of the current Zoning Code.
11. The proposed use is located approximately 175 feet from the closest residential property line.
12. The project is separated from the nearest residential uses by the adjacent tenant spaces in the same commercial building.
13. Interior restroom facilities within the restaurant/bakery are provided and are to remain open and available during the late night business hours.
14. The Police Department has stated that it is neutral to the proposed permit because the location is not considered an unduly concentrated crime area per B&P Section 23958.4(a)(1).

15. The Police Department in its memo recommends that the following conditions be included in the subject permit:
  - a. *Entertainment.* Entertainment shall only be incidental to the restaurant and may be provided between the hours of 6:00 a.m. and 10:00 p.m. daily. Dancing shall be prohibited and no dance floor shall be installed. At no time will the dining room facilities be cleared to allow for a dance area. No DJ type entertainment shall be permitted.
  - b. *Hours of Operation.* Hours of operation to cease at 3:00 a.m., daily. Full kitchen service and full menu service shall be offered during all hours of operation.
  - c. *ABC License.* The project operator shall obtain and maintain the appropriate permit, based on the use of the facility from the State of California Department of Alcoholic Beverage Control (ABC) and shall maintain that license according to the use operated.
  - d. *Alcoholic Beverages.* Alcoholic beverages may be offered for sale or served to patrons for consumption on the premises as an incidental use only to a public eating establishment in conformance with all other applicable legal requirements and with appropriate permits.
  - e. *Nuisance.* This use shall be operated in a manner which does not create a public or private nuisance. Any such nuisance must be abated immediately upon notice by the City.
16. No outdoor activities, other than truck deliveries, maintenance, and garbage collection, are currently proposed.

This Planning Commission concludes and finds, based upon an analysis of the above facts that:

1. The proposed late night use of a public eating establishment use is consistent with the Envision San José 2040 General Plan Land Use/Transportation Diagram designation of Urban Village in that neighborhood-serving commercial uses, such as bakeries and restaurants, are intended uses under this designation.
2. The proposed project complies with all applicable provisions of the Zoning Ordinance.
3. The proposed project is in compliance with the California Environmental Quality Act. The Director of Planning, Building and Code Enforcement has determined that this project is exempt from environmental review pursuant to the California Environmental Quality Act (CEQA) Guidelines Section 15301.
4. The proposed project is consistent with the intent of *Council Policy 6-27 for Evaluation of 24-hour Uses.*

Finally, based upon the above-stated findings and subject to the conditions set forth below, the Planning Commission finds that:

1. The proposed use at the location requested will not
  - a. Adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area; or
  - b. Impair the utility or value of property of other persons located in the vicinity of the site; or
  - c. Be detrimental to public health, safety or general welfare; and

2. The proposed site is adequate in size and shape to accommodate the yards, walls, fences, parking and loading facilities, landscaping and other development features prescribed in this title, or as is otherwise required in order to integrate said use with the uses in the surrounding areas; and
3. The proposed site is adequately served:
  - a. By highways or streets of sufficient width and improved as necessary to carry the kind and quality of traffic such use would generate; and
  - b. By other public or private service facilities as are required.

In accordance with the findings set forth above, a Conditional Use Permit to use the subject property for said purpose specified above and subject to each and all of the conditions hereinafter set forth is hereby granted. This Planning Commission expressly declares that it would not have granted this permit except upon and subject to each and all of said conditions, each and all of which conditions shall run with the land and be binding upon the owner and all subsequent owners of the subject property, and all persons who use the subject property for the use conditionally permitted hereby.

## CONDITIONS

This Conditional Use Permit shall have no force or effect and the subject property shall not be used for the hereby permitted uses unless and until all things required by the below-enumerated precedent conditions shall have been performed or caused to be performed and this Resolution has been recorded with the County Recorder.

1. **Acceptance of Permit.** Per Section 20.100.290(B), should the applicant fail to file a timely and valid appeal of this Permit within the applicable appeal period, such inaction by the applicant shall be deemed to constitute all of the following on behalf of the applicant:
  - a. Acceptance of the Permit by the applicant; and
  - b. Agreement by the applicant to be bound by, to comply with, and to do all things required of or by the applicant pursuant to all of the terms, provisions, and conditions of this permit or other approval and the provisions of Title 20 applicable to such Permit.
2. **Permit Expiration.** This Conditional Use Permit shall automatically expire two years from and after the date of adoption of the Resolution by the Planning Commission, or by the City Council on appeal, granting this Permit, if within such two-year period, the proposed use of this site has not commenced, pursuant to and in accordance with the provisions of this Conditional Use Permit. The date of adoption is the date the Resolution granting this Conditional Use Permit is approved by the Planning Commission. However, the Director of Planning may approve a Permit Adjustment to extend the validity of this Permit in accordance with Title 20.
3. **Conformance with Plans.** Operations shall conform to approved development plans entitled "Conditional Use Permit, Existing Site Plan, Floor Plan, 301 E. Santa Clara St., San Jose," dated March 8, 2012 on file with the Department of Planning, Building and Code Enforcement.

4. **Additional Permits.** The applicant shall secure and/or maintain in good standing, any and all applicable permits from outside agencies and as required per the San José Municipal Code.
5. **Refuse.** All trash areas shall be effectively screened from view and covered and maintained in an orderly state to prevent water from entering into the garbage container. No outdoor storage is allowed/permitted unless designated on the approved plan set. Trash areas shall be maintained in a manner to discourage illegal dumping.
6. **Exterior Clean Up.** The applicant shall be responsible for removing any litter (which emanates from the subject use) at the subject site and on all adjacent properties within 300 feet of the subject property on a daily basis. Garbage pick up shall not occur later than 10:00 p.m. or prior to 7:00 a.m. No cleaning and maintenance for outdoor areas that utilizes mechanical blowers, vacuums, or other noise generating equipment is permitted between the hours of 10:00 p.m. and 7:00 a.m.
7. **Restroom Facilities.** Restroom facilities shall remain open and available during late night business hours.
8. **Police Issues.** The applicant shall maintain a liaison with the Police Department to effectively control crime, gang, drug, and other police problems which may arise from the operation between the hours 12:00 midnight and 3:00 a.m.
9. **Lighting.** The proposed corner entryway, inside of the three, rounded-corner-arches, must remain illuminated during all hours of darkness.
10. **Anti-Graffiti.** The applicant shall remove all graffiti from buildings and wall surfaces within 24 hours of defacement.
11. **Neighborhood Complaints.** Neighborhood complaints related to noise, litter, graffiti, and other disturbances should be relayed to the Code Enforcement Division at (408)277-4528. The list of complaints on record is to be made available to the Planning Commission at any subsequent hearings.
12. **Hours of Operation.** The restaurant/bakery use is allowed to operate between the hours of 6:00 a.m. and 3:00 a.m., seven days a week, for service within the interior of the restaurant/bakery building. No outdoor waiting or seating areas are approved with this permit. Full kitchen service and full menu service shall be offered during all hours of operation.
13. **Alcoholic Beverages.** Alcoholic beverages may be offered for sale or served to patrons for consumption on the premises as an incidental use only to a public-eating establishment in conformance with all other applicable legal requirements and with appropriate permits. Drinking establishments including taverns, bars, cocktail lounges, nightclubs, and similar uses are not allowed with this permit.
14. **Trash Enclosure.** The applicant shall maintain the previously approved trash enclosure in compliance with the San Jose Municipal Code and all other applicable local, State, and Federal regulations.
15. **Revocation, Suspension, Modification.** This Conditional Use Permit may be revoked, suspended or modified by the Planning Commission, or by the City Council on appeal, at any time regardless of who is the owner of the subject property or who has the right to possession

thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Part 3, Chapter 20.44, Title 20 of the San José Municipal Code it finds:

- a. A violation of any conditions of the Conditional Use Permit was not abated, corrected or rectified within the time specified on the notice of violation; or
- b. A violation of any City ordinance or State law was not abated, corrected or rectified within the time specified on the notice of violation; or
- c. The use as presently conducted creates a nuisance

In accordance with the findings set forth above, a permit to use the subject property for said purpose specified above is hereby approved.

**ADOPTED** and issued this **11<sup>th</sup> day of April 2012**, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

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Chairperson

ATTEST:

Joseph Horwedel, Secretary

Deputy

**NOTICE TO PARTIES**

*The time within which judicial review must be sought to review this decision is governed by the provisions of the California Code of Civil Procedure Section 1094.6.*



# Memorandum

**TO:** Jenny Nusbaum  
Planning Department

**FROM:** Ofc. Christine Zarate #3165  
San Jose Police Vice Unit

**SUBJECT:** The City Bakery and Cafe  
301 East Santa Clara Street

**DATE:** January 30, 2012

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Approved

Date

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I have received your request for input regarding The City Bakery and Cafe, 301 East Santa Clara Street, San Jose, Ca. 95112. The City Bakery and Cafe is a previously operating bakery and cafe that currently has an On-Sale ABC license to sell beer and wine and an expired Conditional Use Permit to stay open until 3:00 AM. They are seeking a new Conditional Use Permit for late night use.

Per Business and Professions (B&P) Code Section 23958, the State of California Department of Alcohol Beverage Control shall deny an ABC Application for an ABC License if the issuance of that license would tend to create a law enforcement problem or if it would result in or add to an undue concentration of ABC Licenses, as described in B&P Sections 23958.4 (a)(1) and 23958.4(a)(2). A location can be unduly concentrated because of its criminal statistics and/or its proximity to other ABC Licenses. ABC can issue the license per B&P Sections 23958.4 (b)(1), and 23958.4 (b)(2) if the local governing body determines that the public convenience or necessity would be served. The City of San Jose Planning Department or the Planning Commission are the delegated authorities to grant these exceptions.

The location is not currently in a Strong Neighborhood Initiative area or a Neighborhood Revitalization area.

The City Bakery and Cafe is located in San Jose Police Beat K1. The reported crime statistics as defined by B&P Section 23958.4(c) **are not** over the 20% crime index thus the location **is not** considered unduly concentrated per B&P Section 23958.4 (a)(1). A crime analysis over the past years at the location revealed no significant policing problems.

### Police Beat Crime Statistics

Beat	Index Crimes	Arrests	Total	20% Above Average
K1 (2010)	96	117	213	No
City Average	314	258	634	

Department of Alcohol Beverage Control (ABC) records indicate The City Bakery and Cafe is in census tract 5010. Pursuant to B&P Section 23958.4 (a)(3) ... the ratio of on-sale retail licenses to population in census tract 5010 **does** exceed the ratio of on-sale retail licenses to population in the county in which the applicant premises are located.

**Authorized and Current ABC Licenses in Census Tract 5010**

Census Tract	Authorized ABC Licenses as of January 2008		Current ABC Licenses as of May 18, 2010		Unduly Concentrated	
	On - Sale	Off - Sale	On - Sale	Off - Sale	On - Sale	Off - Sale
5010	7	4	10/1	2/0	Yes	No

The San Jose Police Department is **neutral** to the issuance of a Conditional Use Permit for late night use for The City Bakery and Café with the following conditions.

- **Entertainment.** Entertainment shall only be incidental to the restaurant and may be provided between the hours of 6:00 a.m. and 10:00 p.m. daily. Dancing shall be prohibited and no dance floor shall be installed. At no time will the dining room facilities be cleared to allow for a dance area. No DJ type entertainment shall be permitted.
- **Hours of Operation.** Hours of operation to cease at 3:00 a.m., daily. Full kitchen service and full menu service shall be offered during all hours of operation.
- **ABC License:** The project operator shall obtain and maintain the appropriate permit, based on the use of the facility from the State of California Department of Alcoholic Beverage Control (ABC) and shall maintain that license according to the use operated.
- **Alcoholic Beverages:** Alcoholic beverages may be offered for sale or served to patrons for consumption on the premises as an incidental use only to a public eating establishment in conformance with all other applicable legal requirements and with appropriate permits.
- **Nuisance:** This use shall be operated in a manner which does not create a public or private nuisance. Any such nuisance must be abated immediately upon notice by the City or Redevelopment Agency.

Please feel free to contact me at 277-4322 if you have any questions.

Ofc. Christine Zarate #3165  
Administrative Officer  
Special Investigations/Vice

For:

C. David Knopf, Lieutenant #2923  
Commander, Special Investigations Unit



# Memorandum

To: Lori Moniz

From: Ray Simpson  
Fire Department

Subject: INITIAL RESPONSE TO  
DEVELOPMENT APPLICATION

Date: 02/17/2012

Re: Plan Review Comments –

PLANNING #: CP12-001 - AMANDA 12-001764

DESCRIPTION: Conditional Use Permit for late night use until 3:00 am for a previously operating bakery and cafe for an expired permit on a 0.22-gross-acre site.

LOCATION: northeast corner of East Santa Clara Street and 7th Street

ADDRESS: 301 East Santa Clara Street

1.	<p><b>This review alone should not be construed as final approval of the project by Fire Department. This is only partial review of the project.</b> This review is limited to verifying compliance of the project to Chapter 5, Appendix B, and Appendix C of the 2010 California Fire Code with City of San Jose Amendments (SJFC). <b>Additional review will be required at the building permit stage. All other code requirements for this project shall be reviewed and commented upon by both Fire and Building departments during the building permit process.</b></p> <p>Show on site plans how the following code requirements are in compliance:</p>
	Existing Business requested to extent is hours of operation on its business license to 0300 (3am).

The San Jose Fire Department is updating its inspection records. Part of that update will be to have all downtown businesses, requiring a Place of Assembly permit for their operation, to submit to the Fire Prevention Bureau plans to determine the current occupant load for their location.

**Process:**

- Submit Plans for your business to Associate Engineer Jackie Lin, Fire Department Services, 200 E. Santa Clara St., 2<sup>nd</sup> Floor-Tower, San Jose, CA 95113 (City Hall).
- A Minimum Fee for 1 hour of plan review will be assessed and an occupant load number will be established based on the plans submitted.
- Occupant Load Sign(s) shall be created by the owner(s)/manager(s) based on Fire Prevention Directive #002-2006 Revised 07/18/2007 specifications. Return to Fire Department Services for San Jose Fire Department "APPROVED BY" stamp and Fire Marshall Signature.
- All submissions are due when required by the Fire Marshal.

Any questions may be answered by Captain Dave Olmos, (408) 535-7670.

Ray Simpson  
SJFD – BFP  
200 E. Santa Clara St., 2<sup>nd</sup> Flr. Twr.  
San Jose, Ca. 95113-1905  
Ph. 408-535-7698 Fx. 408-292-6067  
[ray.simpson@sanjoseca.gov](mailto:ray.simpson@sanjoseca.gov)

# Memorandum

**TO:** Jenny Nusbaum  
Department of Planning

**FROM:** Cathy Trujillo  
Environmental Services Dept.

**SUBJECT:** ESD Comments  
CP12-001

**DATE:** January 26, 2012  
Newly Filed Projects for 1/26/2012

PLANNING NO. :	CP12-001
LOCATION:	301 E. Santa Clara Street

ESD received the subject project and is submitting the following comments. Questions regarding these comments may be directed to the Program contact given.

### Integrated Waste Management

- Ensure facility has enough capacity, or frequency of collection, for garbage and recycling to accommodate increased site operations.
- The proposed commercial development must follow the requirements for recycling container space<sup>1</sup>. When 30% or more of the original floor space is added to an existing building, provision must be made for the storage and collection of recyclables. Project plans must show the placement of recycling containers, for example, within the details of the solid waste enclosures.
- It is required that scrap construction and demolition debris be recycled instead of disposing of it in a landfill<sup>2</sup>. An infrastructure exists within San José to accommodate such recycling efforts. Integrated Waste Management staff can provide assistance on how to recycle construction and demolition debris from the project, including information on where to conveniently recycle the material. Additional information may be found at <http://www.sjrecycles.org/construction-demolition/cddd.asp> or by contacting the Commercial Solid Waste Program at (408) 535-8550.
- The City will be enhancing elements of the solid waste management program for commercial and industrial developments, which include the recycling of food waste and related materials starting July 2012. Such program enhancements have been addressed to the City Council for approval in March 2009. Developments will need to provide adequate space for the collection of garbage, recycling and food waste material.

<sup>1</sup> In accordance with the California Public Resources Code, Chapter 18, Articles 1 and 2

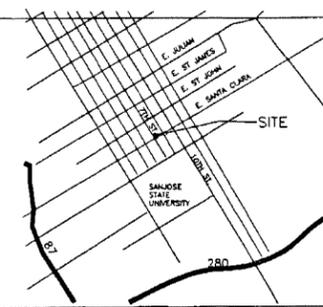
<sup>2</sup> In accordance with the San José Municipal Code, Chapter 9.10 – Solid Waste Management

GENERAL NOTES

1. THE CONTRACTOR SHALL FAMILIARIZE HIMSELF WITH ALL APPLICABLE STANDARDS OUTLINED IN THE "SECRETARY OF INTERIOR'S STANDARDS FOR REHABILITATION AND GUIDELINES FOR REHABILITATING HISTORIC BUILDINGS" PUBLISHED BY THE U.S. DEPARTMENT OF INTERIOR NATIONAL PARK SERVICE PRESERVATION ASSISTANCE DIVISION, WASHINGTON, D.D., AND PERTINENT BRIEFS ON PRESERVATION AND REHABILITATING HISTORIC BUILDINGS PUBLISHED BY THE DEPARTMENT OF INTERIOR, NATIONAL PARK SERVICE PRESERVATION ASSISTANCE DIVISION TECHNICAL PRESERVATION SERVICES. ALL CONSTRUCTION WORK TO BE PERFORMED ON THE BUILDING'S ARCADE FACADE SHALL CONFORM TO THESE STANDARDS.
2. EXTREME CARE SHALL BE OBSERVED DURING THE DEMOLITION OF THE EXISTING EXTERIOR WALLS BETWEEN THE ARCHED OPENINGS OF THE ARCADE SO AS TO MINIMIZE DISTURBANCE OR REMOVAL OF EXISTING HISTORICAL FABRIC OR BUILDING FEATURES.
3. PROVISIONS SHALL BE MADE TO HIRE A LICENSED ARCHITECT FAMILIAR WITH HISTORIC PRESERVATION WORK TO MONITOR THE DEMOLITION AND RECONSTRUCTION WORK OF THE EXISTING ARCADE TO OBSERVE CONFORMANCE OF THE WORK WITH THE STANDARDS LISTED ABOVE.
4. SHOP DRAWINGS SHALL BE PREPARED BY SIGN MAKER AND FORWARDED TO THE PROJECT ARCHITECT FOR REVIEW AND APPROVAL BEFORE COMMENCEMENT OF FABRICATION WORK. PROPOSED SIGNAGE SHALL CONFORM TO THE CITY OF SAN JOSE DOWNTOWN SIGN ZONE REGULATIONS SUBSECTIONS 23.04.110 AND 23.04.120-D.
5. NEW REPLACEMENT ENTRY STEPS AND ARCADE TILE LAYOUT AT NEW MAIN ENTRY SHALL BE REVIEWED AND APPROVED BY THE ARCHITECT BEFORE THE START OF THIS PHASE OF WORK. SAMPLES OF TILE PRODUCTS AND COLORS SHALL BE SUBMITTED AND APPROVED BEFORE ORDERING PRODUCT.

SCOPE OF WORK

LOCATION MAP



PROJECT DATA

A.P.N.	467-18-90
LOT SIZE	9453 SF
CONSTRUCTION TYPE	V-N
ZONING	...
OCCUPANCY	A-3
SPRINKLER	NO
TOTAL FLOOR AREA	2800 SF
PROPOSED USE	RESTAURANT
PREVIOUS USE	RESTAURANT

REVISION	BY

DONACO CONSTRUCTION CO.  
12380 CLAYTON RD.  
SAN JOSE, CA 95128  
PHONE: 408-552-9456  
DESIGNER: TAO YAO

301, E. SANTA CLARA ST.  
SAN JOSE

SHEET INDEX

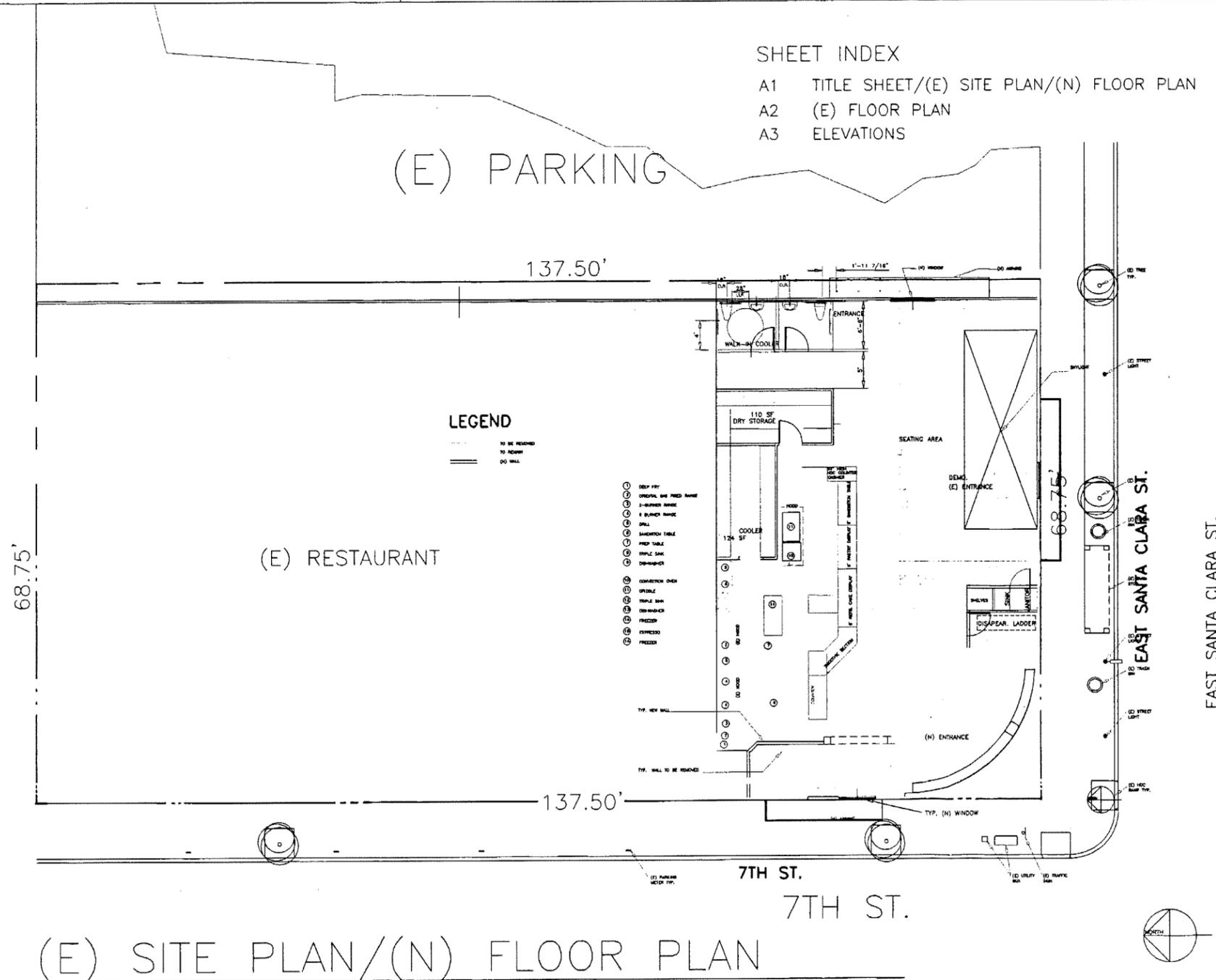
- A1 TITLE SHEET/(E) SITE PLAN/(N) FLOOR PLAN
- A2 (E) FLOOR PLAN
- A3 ELEVATIONS

(E) PARKING

(E) OFFICES

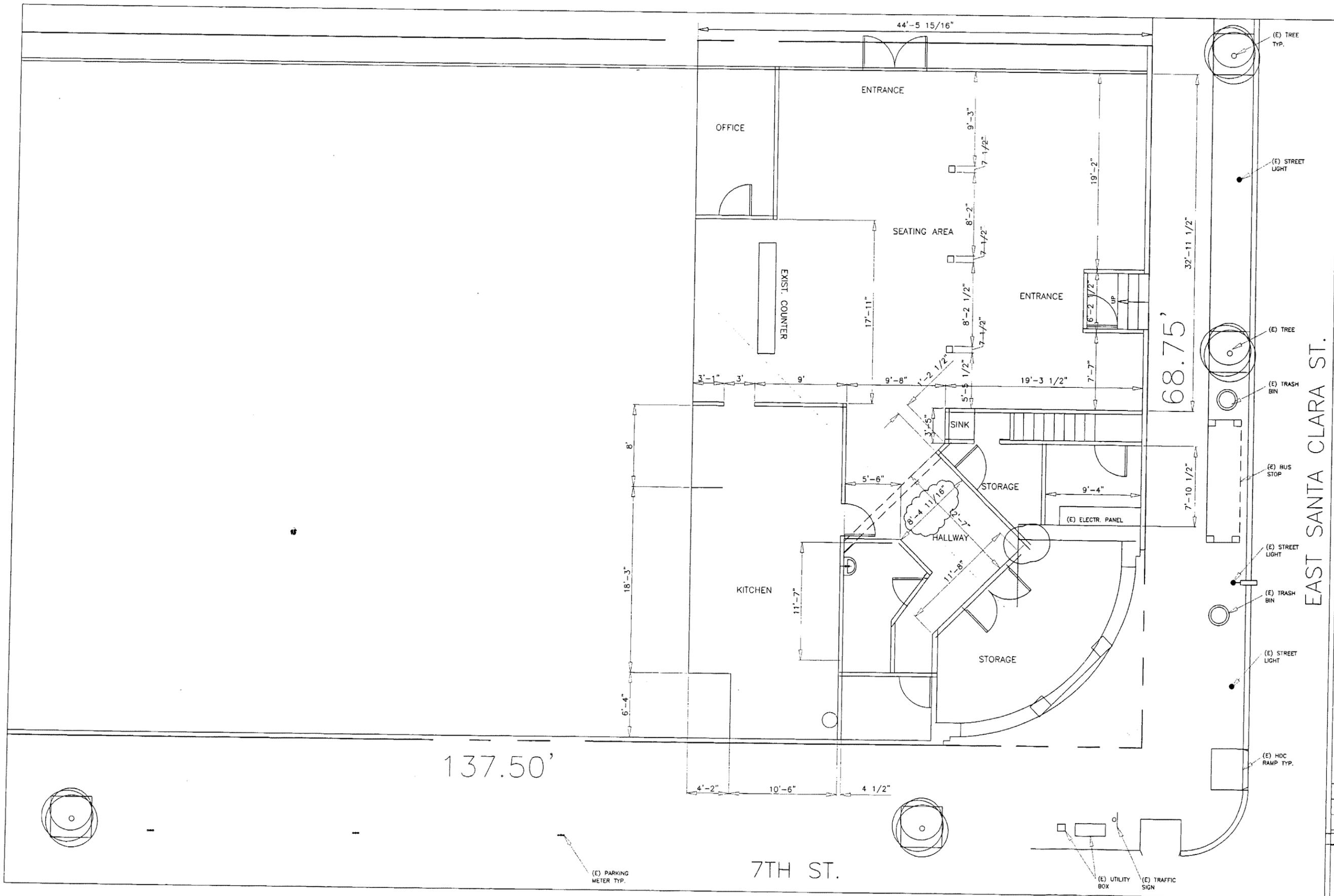
(E) RESTAURANT

(E) SITE PLAN/(N) FLOOR PLAN



CONDITIONAL USE PERMIT  
EXISTING SITE PLAN  
NEW FLOOR PLAN

DATE:  
SCALE: 1/8"=1'-0"  
DRAWN BY:  
JOB #  
SHEET  
**A1**  
-- OF SHEETS



REVISION	BY

**DONACO**  
 CONSTRUCTION CO.  
 10350 CLAYTON RD.  
 SAN JOSE, CA 95128  
 PHONE: 408-952-8408  
 DESIGNER: TAO HOO

301, E. SANTA CLARA ST.  
 SAN JOSE, CALIF.

CONDITIONAL USE PERMIT  
 EXISTING FLOOR PLAN

DATE: \_\_\_\_\_  
 SCALE: 1/8"=1'-0"  
 DRAWN BY: \_\_\_\_\_  
 JOB # \_\_\_\_\_  
 SHEET  
**A2**  
 -- OF SHEETS